



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2012-0953; FRL-9952-76-Region 6]

#### **Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure Requirements for Consultation with Government Officials, Public Notification and Prevention of Significant Deterioration and Visibility Protection for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) submittals from the State of Texas pertaining to Clean Air Act (CAA) section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration and Visibility Protection for the 2008 Ozone (O<sub>3</sub>) and 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS (infrastructure SIPs or i-SIPs). These i-SIPs ensure that the SIP is adequate to meet the State's responsibilities under the CAA. This direct final rule and the accompanying proposal will complete the rulemaking process started in our February 8, 2016, proposal, approve Section 110(a)(2)(J), and confirm that the SIP has adequate infrastructure to implement, maintain and enforce this section of the CAA with regard to the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS.

**DATES:** This rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA

receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. **EPA-R06-OAR-2012-0953**, at <http://www.regulations.gov> or via email to [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst, (214)665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Sherry Fuerst, 214-665-6454,

*fuerst.sherry@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means EPA.

## **I. Background**

On March 12, 2008, EPA revised the levels of the ozone (hereafter the 2008 O<sub>3</sub>) NAAQS (73 FR 16436, March 27, 2008). Likewise, on January 22, 2010, we revised the nitrogen dioxide NAAQS (hereafter the 2010 NO<sub>2</sub>) (75 FR 6474, February 9, 2010). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2). We issued guidance addressing the i-SIP elements for NAAQS.<sup>1</sup> One of these applicable infrastructure elements, CAA section 110(a)(2)(J), requires the SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) prevention of significant deterioration of air quality and visibility protection.

The Texas Commission on Environmental Quality submitted i-SIP demonstrations of how the existing Texas SIP meets the requirements of the 2010 NO<sub>2</sub> NAAQS on December 7, 2012, and for the 2008 O<sub>3</sub> NAAQS on December 13, 2012. A detailed discussion of our evaluation of how the Texas submittals meet 110(a)(2)(J) is provided in our February 8, 2016 proposal (81 FR 6483 at 6486)) and in the Technical Support Document (TSD) for that action.

The TSD can be accessed through *www.regulations.gov* (Document EPA-R06-OAR-2012-0953-

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<sup>1</sup>“Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

002). We proposed to approve elements of the i-SIP submittals from the State of Texas for the O<sub>3</sub> and NO<sub>2</sub> NAAQS but for element (J) and subsequently, we took final action to approve all but element (J) on September 9, 2016 (81 FR 62375). However, through inadvertent errors, we neglected to complete the rulemaking process for CAA section 110(a)(2)(J) for both O<sub>3</sub> and NO<sub>2</sub> NAAQS in the proposal and final documents.

## **II. EPA's Evaluation**

In the proposal, we discussed how the requirements of section 110(a)(2)(J) for both NO<sub>2</sub> and O<sub>3</sub> NAAQS were met. However, we neglected to explicitly propose approval of the specific provisions of Section 110(a)(2)(J) anywhere in the Preamble and definitely not in our "Proposed Action" section at 81 FR 6487. The public had the opportunity to review and comment on our evaluation of this provision in the Preamble but we never formally proposed this provision for approval. As such, we could not finalize approval of section 110(a)(2)(J) for the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS at 81 FR 62375.

Please see EPA's proposed approval at 81 FR 6483 for our technical evaluation. The evaluation of all subsections of CAA section 110(a)(2)(J) can be found at 81 FR 6483, page 6486. The TSD for 81 FR 6483 is available in the docket, provides additional details to support our determination that this element meets the federal requirements and is fully approvable. We incorporate our previous evaluation of this element into this action. EPA did receive and respond to comments on the proposed action, but none of the comments received were specific to element (J) of CAA section 110(a)(2). *See 81 FR 62375 September 9, 2016*. Our evaluation and preliminary determination of approvability did not change as a result of these comments.

This final action is merely correcting our previous error in failing to propose approval of this element on the basis of our previous technical evaluation and preliminary determination.

EPA has not changed its rationale. We therefore are approving the portions of the December 13, 2012, and December 7, 2012, i-SIP submissions from Texas as meeting the infrastructure element (J) for the 2008 ozone NAAQS and the 2010 NO<sub>2</sub> NAAQS. We continue to assert that Texas' existing SIP provides for implementation, maintenance, and enforcement of the 2008 O<sub>3</sub> and 2010 NO<sub>2</sub> NAAQS.

### **III. Final Action**

We are approving portions of the following SIP submittals pertaining to CAA section 110(a)(2)(J): (1) December 13, 2012, SIP submittal for the State of Texas pertaining to the implementation, maintenance and enforcement of the 2008 ozone NAAQS, and; (2) December 7, 2012, SIP submittal pertaining to the implementation, maintenance and enforcement of the 2010 nitrogen dioxide NAAQS as outlined in our February 8, 2016, proposal.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment,

paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days

after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on September 30, 2016, through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone.

Dated: September 30, 2016.

**Samuel Coleman,**  
*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In §52.2270(e), the table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by revising the entries for “Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard” and “Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard” to read as follows.

**§52.2270 Identification of plan.**

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(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
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Infrastructure and Transport SIP Revisions for the 2010 Nitrogen Dioxide Standard	Statewide	12/7/2012	9/9/2016, 81 FR 62375	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portions pertaining to nonattainment and interference with maintenance), D(ii), (E), (F), (G), (H), (K), (L) and (M). Approval for 110(a)(2)(J) on <b>[Insert date of publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b> .
Infrastructure and Transport SIP Revisions for the 2008 Ozone Standard	Statewide	12/13/2012	9/9/2016, 81 FR 62375	Approval for 110(a)(2)(A), (B), (C), (D)(i) (portion pertaining to PSD), D(ii), (E), (F), (G), (H), (K), (L) and (M). Approval for 110(a)(2)(J) <b>[Insert date of publication in the Federal Register]</b> <b>[Insert Federal Register citation]</b> .